ASSEMBLY BILL NO. 61–COMMITTEE ON JUDICIARY

(ON BEHALF OF THE DIVISION OF PUBLIC AND BEHAVIORAL HEALTH OF THE DEPARTMENT OF HUMAN SERVICES)

PREFILED NOVEMBER 16, 2026

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to certain criminal defendants. (BDR 14-152)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.
Effect on the State Highway Fund: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

AN ACT relating to criminal procedure; requiring certain persons who examine a defendant to determine competency to make certain additional assessments and provide certain additional opinions; revising provisions governing the actions a court may take upon finding a defendant incompetent; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that: (1) a person may not be tried or adjudged to punishment for a public offense while incompetent; and (2) any time after the arrest of a defendant, if doubt arises as to the competence of the defendant, the court must suspend the proceedings, the trial or the pronouncing of judgment until the question of competence is determined. (NRS 178.400, 178.405) Existing law establishes procedures for determining whether a defendant is competent to stand trial or receive pronouncement of judgment. Those procedures require: (1) the court to appoint certain qualified persons to examine the defendant; and (2) each person who is so appointed to evaluate whether the defendant is competent or incompetent. (NRS 178.415)

If a person appointed to evaluate competence determines that a defendant who is accused of a gross misdemeanor or a felony is incompetent but that there is a substantial probability that the defendant will attain competency in the foreseeable future, **section 1** of this bill requires the person to provide an opinion as to whether the defendant: (1) is dangerous to himself or herself or to society; and (2) requires inpatient treatment to competency or is an appropriate candidate for outpatient treatment to competency. **Section 1** further requires that if a person appointed to

examine a defendant who is accused of a misdemeanor concludes that the defendant is incompetent, the person must then assess whether the defendant meets the criteria for involuntary commitment. In a county whose population is less than 100,000 (currently all counties except Clark and Washoe Counties), if such a person determines that the defendant is incompetent but that there is a substantial probability that the defendant will attain competency in the foreseeable future, **section 1** additionally requires the person to provide an opinion as to whether the defendant: (1) is dangerous to himself or herself or to society; and (2) requires inpatient treatment to competency or is an appropriate candidate for outpatient treatment to competency.

Existing law requires a court to order a defendant into the custody of the Division of Public and Behavioral Health of the Department of Human Services for detention and treatment if the court finds that: (1) the defendant is incompetent and dangerous to himself or herself or to society; and (2) commitment is required for a determination of the defendant's ability to receive treatment to competency and attain competence. If a court finds a defendant incompetent but not dangerous to himself or herself or to society and finds that commitment is not required, existing law instead requires the court to order the defendant to receive outpatient treatment. (NRS 178.425)

Section 2 of this bill limits the applicability of these provisions to a defendant who is charged with or convicted of a gross misdemeanor or a felony. If a court finds that a defendant who is charged with or convicted of a misdemeanor is incompetent, **section 2** requires the court, with certain exceptions, to: (1) order the involuntary commitment of the defendant if the defendant meets the criteria for such commitment; (2) order the defendant to participate in outpatient treatment to competency; (3) assign the defendant to a diversion program; or (4) dismiss the charges against the defendant. In a county whose population is less than 100,000 (currently all counties except Clark and Washoe Counties), if the court finds that such a defendant is incompetent, **section 2** additionally authorizes the court to: (1) take any of the actions otherwise authorized for such a defendant who is charged with or convicted of a misdemeanor; or (2) order the defendant into the custody of the Division for detention and treatment.

Section 3 of this bill makes a conforming change to refer to provisions renumbered by **section 2**.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 178.415 is hereby amended to read as follows:

178.415 1. ~~[Except as otherwise provided in this subsection,]~~ ***If the defendant is accused of a gross misdemeanor or a felony,*** the court shall appoint two psychiatrists, two psychologists, or one psychiatrist and one psychologist to examine the defendant. ***Each person appointed to examine the defendant shall:***

(a) Evaluate whether the defendant is competent or incompetent based on the criteria prescribed by this chapter; and

(b) If the person determines that the defendant is incompetent but that there is a substantial probability that the defendant will attain competency in the foreseeable future, provide an opinion as to whether the defendant:

(1) Is dangerous to himself or herself or to society; and

(2) Requires inpatient treatment to competency or is an appropriate candidate for outpatient treatment to competency.

2. If the defendant is accused of a misdemeanor, the court ~~[of jurisdiction]~~ shall appoint a psychiatric social worker, advanced practice registered nurse who has the psychiatric training and experience prescribed by the State Board of Nursing pursuant to NRS 632.120 or other person who is especially qualified by the Division, to examine the defendant.

~~[2.]~~ ***The person appointed to examine the defendant shall:***

(a) Evaluate whether the defendant is competent or incompetent based on the criteria prescribed by this chapter; and

(b) If the person concludes that the defendant is incompetent, assess whether the defendant meets the criteria for involuntary commitment pursuant to chapter 433A of NRS.

3. In a county whose population is less than 100,000, if the person appointed to examine the defendant pursuant to subsection 2 determines that the defendant is incompetent but that there is a substantial probability that the defendant will attain competency in the foreseeable future, the person shall provide an opinion as to whether the defendant:

(a) Is dangerous to himself or herself or to society; and

(b) Requires inpatient treatment to competency or is an appropriate candidate for outpatient treatment to competency.

4. Except as otherwise provided in this subsection, at a hearing in open court, the court that orders the examination must receive the report of the examination. If a justice court orders the examination of a defendant who is charged with a gross misdemeanor or felony, the district court must receive the report of the examination.

~~[3.]~~ ***5.*** The court that receives the report of the examination shall permit counsel for both sides to examine the person or persons appointed to examine the defendant. The prosecuting attorney and the defendant may:

(a) Introduce other evidence including, without limitation, evidence related to treatment to competency and the possibility of ordering the involuntary administration of medication; and

(b) Cross-examine one another's witnesses.

~~[4.]~~ ***6.*** A prosecuting attorney may not seek an indictment of the defendant for any offense during the period in which the court is considering whether the defendant is competent or incompetent except upon application by the prosecuting attorney to the chief judge of the district court, or his or her designee, and with leave of the court. The prosecuting attorney must demonstrate that adequate cause exists for the court to grant leave to seek an indictment on the grounds that the availability or unavailability of a witness, or any

other objective factor, significantly impacts the ability of the State to prosecute the matter in the absence of such leave. The prosecuting attorney must give notice of an application made pursuant to this subsection to the attorney for the defendant not less than 24 hours before the hearing on the application.

~~[5.]~~ ***7.*** The court that receives the report of the examination shall then make and enter its finding of competence or incompetence.

~~[6.]~~ ***8.*** The court shall not appoint a person to ***conduct an examination or*** provide a report ~~[or an evaluation]~~ pursuant to this section ~~[,]~~ unless the person is certified by the Division pursuant to NRS 178.417.

Sec. 2. NRS 178.425 is hereby amended to read as follows:

178.425 1. If the court finds ~~[the]~~ ***that a*** defendant ***who is charged with or convicted of a gross misdemeanor or a felony is*** incompetent, and ***finds by clear and convincing evidence that the defendant is*** dangerous to himself or herself or to society and that commitment is required for a determination of the defendant's ability to receive treatment to competency and to attain competence, the judge shall order the sheriff to convey the defendant forthwith, together with a copy of the complaint, the commitment and the physicians' certificate, if any, into the custody of the Administrator or the Administrator's designee for detention and treatment at a division facility that is secure, a facility for the treatment of defendants to competency established within a county jail or detention facility pursuant to subsection 1 of NRS 178.426 or another location to receive services through a program established pursuant to subsection 3 of NRS 178.426, as determined after a clinical review conducted pursuant to subsection 2. If the treating psychiatrist of the defendant determines that psychiatric medication is necessary to restore the defendant to competency and the defendant refuses to take such medication voluntarily, the prosecuting attorney may seek an order for the involuntary administration of psychiatric medication to the defendant.

2. After the court orders a defendant into the custody of the Administrator or the Administrator's designee pursuant to subsection 1 ~~[,]~~ ***or 6,*** the Administrator or the Administrator's designee shall perform a clinical review of the defendant to determine whether the defendant would most appropriately be placed in a division facility that is secure, a facility for the treatment of defendants to competency established within a county jail or detention facility pursuant to subsection 1 of NRS 178.426 or another location to receive services through a program established pursuant to subsection 3 of NRS 178.426. An organization that

enters into a contract with the Administrator pursuant to subsection 1 of NRS 178.426 may not perform such a review.

3. A defendant committed into the custody of the Administrator or the Administrator's designee must be held in such custody until a court orders the defendant's release or until the defendant is returned for trial or judgment as provided in NRS 178.450, 178.455 and 178.460.

4. If the court finds ~~[the]~~ ***that a*** defendant ***who is charged with or convicted of a gross misdemeanor or felony is*** incompetent but ~~[not dangerous to himself or herself or to society, and finds that commitment is]~~ ***does*** not ***make the findings*** required ~~[for a determination of the defendant's ability to receive treatment to competency and to attain competence,]~~ ***by subsection 1,*** the judge shall order the defendant to report to the Administrator or the Administrator's designee as an outpatient for treatment, if it might be beneficial, and for a determination of the defendant's ability to receive treatment to competency and to attain competence. The court may require the defendant to give bail for any periodic appearances before the Administrator or the Administrator's designee.

5. ***Except as otherwise provided in subsection 6, if the court finds that a defendant who is charged with or convicted of a misdemeanor is incompetent, the court shall take one of the following actions:***

(a) Order the involuntary commitment of the defendant pursuant to chapter 433A of NRS, if the defendant meets the criteria for such commitment.

(b) Order the defendant to participate in outpatient treatment to competency.

(c) Assign the defendant to a diversion program.

(d) Dismiss the charges against the defendant.

6. In a county whose population is less than 100,000, if the court finds that a defendant who is charged with or convicted of a misdemeanor is incompetent, and finds by clear and convincing evidence that the defendant is dangerous to himself or herself or to society and that commitment is required for a determination of the defendant's ability to receive treatment to competency and to attain competence, the court may:

(a) Take an action set forth in subsection 5; or

(b) Order the sheriff to convey the defendant forthwith, together with a copy of the complaint, the commitment and the physicians' certificate, if any, into the custody of the Administrator or the Administrator's designee for detention and treatment at a division facility that is secure, a facility for the treatment of defendants to competency established within a county

jail or detention facility pursuant to subsection 1 of NRS 178.426 or another location to receive services through a program established pursuant to subsection 3 of NRS 178.426, as determined after a clinical review conducted pursuant to subsection 2.

7. Except as otherwise provided in subsection ~~[6.]~~ ***8,*** proceedings against the defendant must be suspended until the Administrator or the Administrator's designee or, if the defendant is charged with a misdemeanor, the judge finds the defendant capable of standing trial or opposing pronouncement of judgment as provided in NRS 178.400.

~~[6.]~~ ***8.*** Whenever the defendant has been found incompetent, with no substantial probability of attaining competency in the foreseeable future, and released from custody or from obligations as an outpatient pursuant to paragraph (d) of subsection 4 of NRS 178.460, the proceedings against the defendant which were suspended must be dismissed. No new charge arising out of the same circumstances may be brought except upon application by the prosecuting attorney to the chief judge of the district court, or his or her designee, and with leave of the court where:

(a) The State has a good faith belief, based on articulable facts, that the defendant has attained competency;

(b) The State has a compelling interest in bringing charges again; and

(c) The period, equal to the maximum time allowed by law for commencing a criminal action for the crime with which the defendant was charged, has not lapsed since the date of the alleged offense.

➥ The prosecuting attorney must give notice of an application made pursuant to this subsection to the attorney for the defendant not less than 24 hours before the hearing on the application.

~~[7.]~~ ***9.*** If a defendant is found incompetent pursuant to this section, the court shall cause, within 5 business days after the finding, on a form prescribed by the Department of Public Safety, a record of that finding to be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.

~~[8.]~~ ***10.*** As used in this section ~~[,]~~ ***:***

(a) "Diversion program" means a preprosecution diversion program established pursuant to NRS 174.032.

(b) "National Instant Criminal Background Check System" has the meaning ascribed to it in NRS 179A.062.

Sec. 3. NRS 178.461 is hereby amended to read as follows:

178.461 1. If the proceedings against a defendant who is charged with any category A felony or a category B felony listed in subsection 6 are dismissed pursuant to subsection ~~[6]~~ ***8*** of NRS 178.425, and the defendant was previously ordered, pursuant to NRS 178.425, to receive treatment to competency in an attempt to cause the defendant to attain competency to stand trial or receive pronouncement of judgment for any such felony charge that was dismissed, the prosecuting attorney may, within 10 judicial days after the dismissal, file a motion with the court for a hearing to determine whether to commit the person to the custody of the Administrator. A motion filed pursuant to this subsection must:

(a) Include a request for an order directing the Division to complete a comprehensive risk assessment; and

(b) Be served upon the Division.

2. If the prosecuting attorney files a motion pursuant to subsection 1, the court shall, not later than 5 judicial days after the date on which the motion is filed, issue an order directing the Division to complete a comprehensive risk assessment. The Division shall, except as otherwise provided in this subsection, complete the comprehensive risk assessment within 40 calendar days after the court issues the order and provide the comprehensive risk assessment to the court, the prosecuting attorney and counsel for the person. The court may grant the Division an extension to complete the comprehensive risk assessment upon a showing of good cause. Within 10 judicial days after receipt of the comprehensive risk assessment, the court shall hold a hearing on the motion. If the person was charged with any category A felony other than murder or sexual assault or a category B felony listed in subsection 6 and the comprehensive risk assessment indicates that the person does not require the level of security provided by a forensic facility, the court shall dismiss the motion.

3. At a hearing held pursuant to subsection 2, if the court finds by clear and convincing evidence that the person has a mental disorder, that the person is a danger to himself or herself or others and that the person's dangerousness is such that the person requires placement at a forensic facility, the court may order:

(a) The sheriff to take the person into protective custody and transport the person to a forensic facility; and

(b) That the person be committed to the custody of the Administrator and kept under observation until the person is eligible for conditional release pursuant to NRS 178.463 or until the maximum length of commitment described in subsection 4 or 7 has expired.

4. Except as otherwise provided in subsection 7, the length of commitment of a person pursuant to subsection 3 must not exceed 10 years, including any time that the person has been on conditional release pursuant to NRS 178.463.

5. At least once every 12 months, the court shall review the eligibility of the defendant for conditional release.

6. The provisions of subsection 1 apply to any of the following category B felonies:

(a) Voluntary manslaughter pursuant to NRS 200.050;

(b) Mayhem pursuant to NRS 200.280;

(c) Kidnapping in the second degree pursuant to NRS 200.330;

(d) Assault with a deadly weapon pursuant to NRS 200.471;

(e) Battery with a deadly weapon pursuant to NRS 200.481;

(f) Aggravated stalking pursuant to NRS 200.575;

(g) First degree arson pursuant to NRS 205.010;

(h) Residential burglary with a deadly weapon pursuant to NRS 205.060;

(i) Invasion of the home with a deadly weapon pursuant to NRS 205.067;

(j) Any category B felony involving the use of a firearm; and

(k) Any attempt to commit a category A felony.

7. If a person is within 6 months of the maximum length of commitment set forth in this subsection or subsection 4, as applicable, and:

(a) Was charged with murder or sexual assault; and

(b) Was committed to the custody of the Administrator pursuant to this subsection or subsection 3,

➥ the Administrator may file a motion to request an extension of the length of commitment for not more than 5 additional years.

8. The court may grant a motion for an extension of the length of commitment pursuant to subsection 7 if, at a hearing conducted on the motion, the court finds by clear and convincing evidence that the person is a danger to himself or herself or others and that the person's dangerousness is such that the person requires placement at a forensic facility.

9. At a hearing conducted pursuant to subsection 8, a person who is committed has the right to be represented by counsel. If the person does not have counsel, the court shall appoint an attorney to represent the person.

Sec. 4. This act becomes effective on July 1, 2027.

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